

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	}	CHAPTER 13
	}	
TIFFANY PORCH-POPE,	}	CASE NO. 19-60045-PMB
AKA TIFFANY PORCH,	}	
AKA TIFFANY POPE,	}	
	}	
	}	
DEBTOR.	}	
_____	}	
	}	
MELISSA J. DAVEY,	}	
CHAPTER 13 TRUSTEE,	}	
	}	
Plaintiff,	}	ADVERSARY PROCEEDING
	}	NO. _____
V.	}	
	}	
CARVANA, LLC,	}	
	}	
Defendant.	}	

COMPLAINT

COMES NOW Melissa J. Davey, Standing Chapter 13 Trustee in the above styled case, and files this Complaint and shows the Court the following:

1.

This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 105 and 542.

2.

This matter constitutes a core proceeding pursuant to 28 U.S.C. §§ 157.

3.

Venue is proper in this Court pursuant to 28 U.S.C. § 1409 as arising in the Chapter 13 case of Tiffany Porch-Pope (hereinafter "Debtor"), Case No. 19-60045-PMB, pending in the Northern District of Georgia.

4.

This proceeding is initiated pursuant to Rule 7001(1) of the Federal Rules of Bankruptcy Procedure.

5.

The Defendant, CARVANA, LLC, (hereinafter "Defendant"), may be served pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3) via first class mail to:

Carvana, LLC
P.O Box 29018
Phoenix, AZ 85038

Carvana, LLC
1026 Marietta St NW
Atlanta, GA 30318-5506

Carvana, LLC
Registered Agent: Corporation Service Company
40 Technology Parkway Southsuite 300
Norcross, GA 30092

And additional notice for the Defendant at:

Carvana, LLC
Registered Agent: Corporation Service Company
1930 W. Rio Salado Pwky
Tempe, AZ 85281

Ritchie Pierce, Bridgecrest Specialist
Bridgecrest Credit Company, LLC
P.O Box 29018
Phoenix, AZ 85038

Lilly Guzman, Bankruptcy Specialist
Carvana, LLC
P.O Box 29018
Phoenix, AZ 85038

BACKGROUND

6.

On or about June 11, 2019, the Debtor entered into a contract for purchase of a 2016 Lexus CT 200H from the seller of the vehicle Carvana, LLC. A copy of the Contract is included in Proof of Claim 12-1, and attached herein as Exhibit A.

7.

As proof of a perfected security interest in this vehicle, Defendant attached a lien and title information to Claim 12-1. This is attached as Exhibit B.

8.

The Debtor filed her petition under Chapter 13 of Title 11 on June 28, 2019. The Vehicle was listed in the Debtor's sworn schedules and is property of the estate pursuant to 11 U.S.C. § 541.

9.

The Debtor pledged the Vehicle as security for payment of the indebtedness.

10.

The Defendant filed Proof of Claim 12-1 on September 4, 2019. The proof of claim was filed as secured and included a copy of the contract and electronic title information as mentioned previously.

11.

Exhibit B, the Defendant's evidence of perfection, reflects that the lien perfection request was received on July 18, 2019, post-petition, and more than thirty (30) days following the purchase of the vehicle.

COUNT ONE – AVOIDANCE OF POST-PETITION TRANSFER

12.

Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 11 above, as if fully set forth herein.

13.

A transfer includes creation of a lien. 11 U.S.C. § 101(54)(A).

14.

The perfection of the security interest in the Vehicle (the “Transfer”) occurred after the commencement of the case. 11 U.S.C. § 549(a)(1).

15.

The Transfer was not authorized by Title 11 or the Court. 11 U.S.C. § 549(a)(2).

16.

As a result, the Transfer was in violation of the automatic stay. 11 U.S.C. § 362.

17.

The Transfer was made more than thirty (30) days after the contract and so there is no relation back to the original time of creation. O.C.G.A. § 40-3-50(b)(2).

COUNT TWO – AVOIDANCE OF PREFERENTIAL TRANSFER

18.

Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 17 above, as if fully set forth herein.

19.

The Transfer is also avoidable as a preference pursuant to 11 U.S.C. § 547 since the underlying security interest was not properly perfected prior to the filing of this case.

20.

The Transfer was made to or for the benefit of a creditor. 11 U.S.C. § 547(b)(1).

21.

The Transfer was for or on account of antecedent debt, to wit, the financing loan on the Vehicle. 11 U.S.C. § 547(b)(2).

22.

The Debtor was insolvent pursuant to Schedules and is presumed insolvent as the Transfer occurred within ninety (90) days of the petition. 11 U.S.C. §§ 547(b)(3) and 547(f).

23.

The Transfer was made within ninety (90) days of the petition. 11 U.S.C. § 547(b)(4).

24.

The Defendant obtained a lien secured in the amount of \$19,543.80; whereas, if the Transfer had not been made and the case filed under Chapter 7, the Defendant would be an unsecured creditor and limited to a pro rata share of the un-exempt equity in the Vehicle. 11 U.S.C. § 547(b)(5).

COUNT THREE – RECOVERY OF THE VEHICLE OR ITS VALUE

25.

Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 24 above, as if fully set forth herein.

26.

Section 550(a) of Title 11 provides that, to the extent a transfer is avoidable under 11 U.S.C. § 547 and/or 548, the Plaintiff may recover the property transferred or the value of said property from the initial transferee.

27.

The Transfer is avoidable pursuant to 11 U.S.C. § 547.

28.

The Defendant is the initial transferee or the entity for whose benefit the transfer was made. 11 U.S.C. § 550(a)(1)

29.

Plaintiff is entitled to recover from Defendant the amount and value of the transfer. Schedule A/B reflects a value of \$15,000.00 for the Vehicle.

WHEREFORE, Plaintiff respectfully requests that this Court enter Order and Judgment against Defendant as follows:

- 1) Voiding Defendant's security interest in the Vehicle;
- 2) Finding Defendant to be an unsecured creditor;
- 3) Directing Defendant to furnish to the Trustee the title certificate with the lien released;
- 4) Award against Defendant a Judgment for the value of the vehicle, the amount of \$15,000.00 plus interest;
- 5) Providing for all costs of this action; and
- 6) Providing for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Delayce Rowland
Delayce S. Rowland, GA Bar No. 773359
Attorney for the Chapter 13 Trustee
260 Peachtree Street, Suite 200
Atlanta, GA 30303
678-510-1444

EXHIBIT A

GA-102 10/10/2015

Retail Installment Contract and Security Agreement

Seller Name and Address	Buyer(s) Name(s) and Address(es)	Summary
CARVANA, LLC	Tiffany Porch Pope	No. _____
1026 MARIETTA ST NW	7480 Parkland Bnd	Date 06/11/19
ATLANTA GA 30318-5506	Fairburn GA 30213	

☐ Business, commercial or agricultural purpose Contract.**Truth-In-Lending Disclosure**

Cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	you or on your behalf.	when you have made all scheduled payments.	credit, including your down payment of
22.19 %	\$ 15,767.71	\$ 19,332.25	\$ 35,099.96	\$ 700.00
				\$ 35,799.96

Payment Schedule. Your payment schedule is:

of Payments	Amount of Payments	When Payments are Due
71	\$ 488.00	monthly beginning 07/10/19
1	\$ 451.96	06/10/25
N/A	\$ N/A	N/A

Security. You are giving us a security interest in the Property purchased.

Late Charge. If all or any portion of a payment is not paid within 10 days of its due date, you will be charged a late charge of the lesser of 5% of the unpaid amount of the payment due \$50.00.

Prepayment. If you pay off this Contract early, you ☐ may ☒ will not have to pay a Minimum Finance Charge.

Contract Provisions. You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and payment refunds and penalties.

Description of Property

Year	Make	Model	Style	Vehicle Identification Number	Odometer Mileage
2016	Lexus	CT	Hatchback	JTHKD5BH2G2252178	51590
New	Other:				
Used	N/A				
Demo					

Description of Trade-In

N/A	N/A	N/A	N/A
-----	-----	-----	-----

until maturity. After maturity, or after you default and we demand payment, we will charge finance charges on the unpaid balance at 22.19 % per year. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the Truth-In-Lending Disclosure. You also agree to pay any additional amounts according to

Conditional Delivery**Sales Agreement**

Insurance Disclosures

may retain or receive a portion of any amounts paid to others.

None is checked, you have declined the coverage we offered.

By: _____ N/A _____ N/A _____ DOB _____

By: _____ N/A _____ N/A DOB: _____

By: _____ N/A _____ N/A

Property Insurance. You must insure the Property. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ 1,000.00 . If you get insurance from or through us you will pay \$ N/A for N/A of coverage.

This premium is calculated as follows:

- | | | | | | |
|--------------------------|----|--------------------------------|---|----|--------------------------------|
| <input type="checkbox"/> | \$ | <u> N/A </u> | Deductible, Collision Cov. | \$ | <u> N/A </u> |
| <input type="checkbox"/> | \$ | <u> N/A </u> | Deductible, Comprehensive | \$ | <u> N/A </u> |
| <input type="checkbox"/> | | | Fire-Theft and Combined Additional Cov. | \$ | <u> N/A </u> |
| <input type="checkbox"/> | | <u> N/A </u> | | \$ | <u> N/A </u> |

Liability insurance coverage for bodily injury and property damage caused to others is not included in this Contract unless checked and indicated.

- ☐ **Single-Interest Insurance.** You must purchase single-interest insurance as part of

Additional Protections

erage	N/A
	N/A
n	N/A
e	\$ N/A
erage	N/A
JPope 06/11/19	
Tiffany Porch Pope	Date
N/A	N/A
	Date
N/A	N/A
	Date

Additional Terms of the Sales Agreement

Definitions. "Contract" refers to this Retail Installment Contract and Security Agreement. pronouns "you" and "your" refer to each Buyer signing this Contract, and any antors, jointly and individually. The pronouns "we", "us" and "our" refer to the Seller any entity to which it may transfer this Contract. "Vehicle" means each motor vehicle ribed in the Description of Property section. "Property" means the Vehicle and all other erty described in the Description of Property and Additional Protections sections.

Phase of Property. You agree to purchase the Property from Seller, subject to the s and conditions of this Contract. You also agree that the purchase of the Property on

name and your principal residence. You will provide us with at least 30 days notice before you change your name or principal residence.

Telephone Monitoring and Calling. You agree that we may from time to time monitor and record telephone calls made or received by us or our agents regarding your account to assure the quality of our service. In order for us to service the account or to collect any amounts you may owe, and subject to applicable law, you agree that we may from time to time make calls and send text messages to you using prerecorded/artificial voice messages or through the use of an automatic dialing device at any telephone number you provide to us in connection with your account, including a mobile telephone number that could result in charges to you.

Default. You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- ◆ You fail to perform any obligation that you have undertaken in this Contract.
- ◆ We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.

If you default, you agree to pay our costs for collecting amounts owing, including court costs and fees for repossession, repair, storage and sale of the Property securing this Contract. You also agree to pay reasonable attorneys' fees after default and referral to an attorney not a salaried employee of ours. The maximum attorneys' fees you will pay will be 15% of the amount you owe.

If an event of default occurs as to any of you, we may exercise our remedies against any of all of you.

Remedies. If you are in default on this Contract, we have all of the remedies provided by law and this Contract. Those remedies include:

- ◆ We may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
- ◆ We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. You will repay us that amount immediately. That amount will earn finance charges from the date we pay it at the post-maturity rate described in the Payment section until paid in full.
- ◆ We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.

Notices

Security Agreement

urity. To secure your payment and performance under the terms of this Contract, you us a security interest in the Vehicle, all accessions, attachments, accessories, and oment placed in or on the Vehicle and in all other Property. You also assign to us and us a security interest in proceeds and premium refunds of any insurance and service racts purchased with this Contract.

es Toward Property. By giving us a security interest in the Property, you represent agree to the following:

You will defend our interests in the Property against claims made by anyone else. You will keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.

You will keep the Property in your possession and in good condition and repair. You will use the Property for its intended and lawful purposes.

You agree not to remove the Property from the U.S. without our prior written consent.

You will not attempt to sell the Property, transfer any rights in the Property, or grant another lien on the Property without our prior written consent.

You will pay all taxes and assessments on the Property as they become due.

You will notify us with reasonable promptness of any loss or damage to the Property.

You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

reement to Provide Insurance. You agree to provide property insurance on the erty protecting against loss and physical damage and subject to a maximum deductible unt indicated in the *Insurance Disclosures* section, or as we will otherwise require. You name us as loss payee on any such policy. Generally, the loss payee is the one to be the policy benefits in case of loss or damage to the Property. In the event of loss or age to the Property, we may require additional security or assurances of payment re we allow insurance proceeds to be used to repair or replace the Property. You agree if the insurance proceeds do not cover the amounts you still owe us, you will pay the rence. You will keep the insurance in full force and effect until this Contract is paid in

u fail to obtain or maintain this insurance, or name us as loss payee, we may obtain

disposicion en contrario incluida en el contrato de compraventa.

Third Party Agreement

(This section applies ONLY to a person who will have an ownership interest in the Property but is NOT a Buyer obligated to pay this Contract ("Third Party Owner").)

In this section only, "you" means only the person signing this section.

By signing below you agree to give us a security interest in the Property described in the *Description of Property* section. You also agree to the terms of this Contract except that you will not be liable for the payments it requires. Your interest in the Property may be use to satisfy the Buyer's obligation. You agree that we may renew, extend or change this Contract, or release any party or Property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

N/A

N/A

By:

Date

Signature of Third Party Owner (NOT the Buyer)

JPape

Signature Notices

cobuyer.sign

Signatures

entire Agreement. Your and our entire agreement is contained in this Contract. There are no unwritten agreements regarding this Contract. Any change to this Contract must be in writing and signed by you and us.

JPape

06/11/19

Tiffany Porch Pope

Date

N/A

N/A

Date

N/A

N/A

Date

N/A

N/A

By:

Date

Seller

Paul Pope

06/11/19

By:

CARVANA, LLC

Date

Assignment. This Contract and Security Agreement is assigned to

N/A

the Assignee, phone N/A. This assignment is made under the terms of a separate agreement made between the Seller and Assignee.

☐ This Assignment is made with recourse.

Seller

N/A

By:

Date

JPape

EXHIBIT B

Collateral Management Services
9750 Goethe Road | Sacramento, CA 95827
www.dealertrack.com



Carvana LLC

Lien and Title Information

Lienholder

ELT Lien ID 001101896845
Lienholder CARVANA LLC
Lienholder Address
Lien Release Date

Vehicle and Titling Information

VIN	JTHKD5BH2G2252178	Issuance Date	7/18/2019
Title Number	770004253577962	Received Date	7/18/2019
Title State	GA	ELT/Paper	ELECTRONIC
Year	2016	Odometer Reading	
Make	LEXS	Branding	
Model			
Owner 1	TIFFANY PORCH POPE		
Owner 2			
Owner Address	144 SHORT JAY ST WOODBURY, GA 302936110		

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